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31 MAR 86

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**REMARKS**

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OPTIONAL FORM 41 (Rev. 7-76)  
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FPMR (41 CFR) 101-11.206

\* U.S.G.P.O.: 1983 - 421-529/320

Central Intelligence Agency



Washington, D.C. 20505



OCA 86-0800

24 MAR 1986

100-13

The Honorable Lee H. Hamilton  
Chairman  
Permanent Select Committee  
on Intelligence  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the Director of Central Intelligence, I am pleased to respond to your letter of March 12, 1986 which requests comments on H.R. 3963, the "Defense Intelligence Commercial Entities Act".

The Agency's comments are under preparation. We will provide them as soon as they are available.

Thank you for the opportunity to comment on this important legislative proposal.

Sincerely,

/s/ David D. Gries

David D. Gries  
Director, Office of Congressional Affairs

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Richard J. Kerr Deputy Director for Administration			DATE 28 March 1986	
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1. <del>Deputy Director for Legislation</del> <del>Office of Congressional Affairs</del> <del>7B24 Headquarters</del>			✓	
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				COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. D/Communications [ ]		no comment 3/28/86		Please comment ("No comment" can be provided by telephone) by COB 27 March 1986.  Distributed 3/25 D.
2. D/Finance 616 Key		Comment 3/20/86		
3. D/Information Services 1206 Ames		no comment 3/20/86		
4. D/Information Technology 2D0105 Hqs		no comment 3/28/86		
5. D/Logistics [ ]		concerns 3/28/86		
6. D/Medical Services 1D4040 Hqs		no comment 3/28/86		
7. D/Personnel [ ]		no comment 3/20/86		
8. D/Security [ ]		no comment 3/26/86		
9. D/Training and Education 936 CoC		NO comment 3/20/86		
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## ROUTING AND TRANSMITTAL SLIP

24 MAR 86

TO: (Name, office symbol, room number, building, Agency/Post)		Initials	Date
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REMARKS

#1 - 2: ACTION

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\* U.S.G.P.O.: 1983-421-529/320

OPTIONAL FORM 41 (Rev. 7-76)  
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OCA 86-0877  
21 March 1986

MEMORANDUM FOR: DDA  
C/PCS/DDO  
C/[ ] DDO  
C/CI/DDO  
C/[ ] EPS/DDO  
General Counsel  
Attn: AC/OSD/OGC

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FROM: [ ]  
Deputy Director for Legislation  
Office of Congressional Affairs

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SUBJECT: Request for Comments: Proposed Views Letter  
to HPSCI on H.R. 3963 - Representative  
Whitehurst DoD Proprietaries Legislation

1. Representative Hamilton, Chairman of the House Permanent Select Committee on Intelligence (HPSCI), has asked for the Agency's comments on H.R. 3963, the "Defense Intelligence Commercial Entities Act" (Tab A - Hamilton letter). The bill would authorize the creation of Department of Defense commercial proprietaries (Tab B - H.R. 3963 and remarks accompanying introduction). As such, it is an alternative to the Administration proposal on this subject. That proposal was, as you know, recently transmitted to the Congress as Title V of the draft "Intelligence Authorization Act for Fiscal Year 1987" (Tab C - Title V only).


2. This Office has prepared a draft reponse to the Hamilton letter (Tab D). We would appreciate receiving your comments on that draft by March 28, 1986.

3. For your further information, we have attached copies of a letter on this subject sent last year by the Deputy Director for Operations to Representative Stump, Ranking Minority Member of the HPSCI (Tab E).

4. After the draft is coordinated within the Agency, it will be sent to the Office of Management and Budget (OMB) for Administration clearance. OMB will, of course, send it to DoD for comment before clearing it for transmission to Representative Hamilton.

5. Your cooperation is most appreciated.

STAT



Deputy Director for Legislation  
Office of Congressional Affairs

Attachments:  
as stated



LOUIS STOKES, OHIO  
DAVE MCCURDY, OKLAHOMA  
ANTHONY C. BEILSON, CALIFORNIA  
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MICHAEL J. O'NEIL, CHIEF COUNSEL  
STEVEN E. BERRY, ASSOCIATE COUNSEL

## U.S. HOUSE OF REPRESENTATIVES

PERMANENT SELECT COMMITTEE  
ON INTELLIGENCE

WASHINGTON, DC 20515

Executive Registry

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A

March 12, 1986

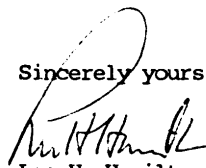
Honorable William J. Casey  
Director of Central Intelligence  
Washington, D.C. 20505

Dear Mr. Casey:

The bill H.R. 3963, "Defense Intelligence Commercial Entities Act," introduced by Congressman G. William Whitehurst, has been referred to this Committee. The Committee would appreciate receiving your views on H.R. 3963.

With best wishes, I am

Sincerely yours,

  
Lee H. Hamilton  
Chairman

Enclosures: H.R. 3963  
Section-by-Section Analysis

I

B

99TH CONGRESS  
1ST SESSION

# H. R. 3963

To provide authority to the Secretary of Defense to establish and operate commercial entities to provide cover for Department of Defense foreign intelligence collection activities, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 1985

Mr. WHITEHURST introduced the following bill; which was referred to the Committees on Armed Services and the Permanent Select Committee on Intelligence

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## A BILL

To provide authority to the Secretary of Defense to establish and operate commercial entities to provide cover for Department of Defense foreign intelligence collection activities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Defense Intelligence  
4 Commercial Entities Act".

5 SEC. 2. (a) Subtitle A of title 10, United States Code is  
6 amended by adding at the end of part I the following new  
7 chapter:

1           **"CHAPTER 19—DEPARTMENT OF DEFENSE**  
 2           **INTELLIGENCE COMMERCIAL ENTITIES**

"Sec.

"391. Authority for intelligence commercial entities.

"392. Administrative support for intelligence commercial entities.

"393. Use and disposition of funds.

"394. Use of prevailing commercial practices.

"395. Limitations on activities of intelligence commercial entities.

"396. Executive branch oversight, accountability, and coordination.

"397. Relationship to laws of the several States.

"398. Delegation of authority.

"399. Definitions.

3   **"§ 391. Authority for intelligence commercial entities**

4           “(a)(1) The Secretary of Defense, with the concurrence  
 5 of the Attorney General and the Director of Central Intelli-  
 6 gence, may authorize, for a period not to exceed two years,  
 7 the establishment and operation in accordance with the provi-  
 8 sions of this chapter of a commercial entity to provide cover  
 9 for foreign intelligence collection activities of the Department  
 10 of Defense, if the Secretary certifies in writing that establish-  
 11 ment and operation of such entity is essential to the conduct  
 12 of an authorized foreign intelligence collection activity of the  
 13 Department of Defense.

14           “(2) With the same concurrences and certification re-  
 15 quired by paragraph (1) for the initial authorization under  
 16 that paragraph for establishment and operation of a commer-  
 17 cial entity to provide cover for foreign intelligence collection  
 18 activities of the Department of Defense, the Secretary of De-  
 19 fense may renew authorization to operate such entity in ac-

1 cordance with the provisions of this chapter for additional  
2 periods of not to exceed two years each.

3 “(b) The Secretary of Defense may terminate a com-  
4 mercial entity authorized under subsection (a) at any time.

5 **“§ 392. Administrative support for intelligence commercial**  
6 **entities**

7 “The Secretary of Defense is authorized to acquire, use  
8 and dispose of goods, services, real property, personal prop-  
9 erty, intangible property, buildings, facilities, space, insur-  
10 ance, licenses, and supplies to establish, operate, and termi-  
11 nate a commercial entity authorized under section 391 of this  
12 title.

13 **“§ 393. Use and disposition of funds**

14 “(a) The Secretary of Defense may deposit in, and with-  
15 draw from, banks and other financial institutions—

16 “(1) funds appropriated to the Department of De-  
17 fense that are used to establish, operate or terminate a  
18 commercial entity authorized under section 391 of this  
19 title; and

20 “(2) funds generated by a commercial entity au-  
21 thorized under section 391 of this title.

22 “(b) Funds generated by a commercial entity authorized  
23 under section 391 of this title may be used to offset necessary  
24 and reasonable expenses incurred by that entity.

1       “(c) Funds generated by a commercial entity authorized  
2 under section 391 that are no longer necessary for the con-  
3 duct of the activities of that entity shall be deposited in the  
4 Treasury of the United States as miscellaneous receipts as  
5 soon as practicable.

6       “(d) Upon the termination of a commercial entity estab-  
7 lished under section 391 of this title, the proceeds therefrom,  
8 after all obligations are met, shall be deposited in the Treas-  
9 ury of the United States as miscellaneous receipts.

10   **“§ 394. Use of prevailing commercial practices**

11       “The establishment, operation, and termination of a  
12 commercial entity authorized under section 391 of this title,  
13 any acquisition, use or disposition authorized by or pursuant  
14 to section 392 of this title with respect to such entity, and  
15 any deposit, withdrawal or use of funds authorized by or pur-  
16 suant to section 393 of this title with respect to such entity—

17           “(1) shall be carried out in accordance with pre-  
18 vailing commercial practices, consistent with the pro-  
19 tection of intelligence sources, methods, and activities  
20 from unauthorized disclosures; and

21           “(2) shall not be subject to any Federal statute  
22 (other than this chapter, title V of the National Securi-  
23 ty Act of 1947, and the War Powers Resolution) appli-  
24 cable to Federal appropriations, Federal receipt and  
25 use of funds other than appropriated funds, Federal ac-

1       quisitions, Federal property management, Federal serv-  
2       ices management, Federal information management,  
3       Federal tort claims, Federal employment of Federal  
4       Government corporations if, and to the extent that, the  
5       Secretary of Defense certifies in writing that compli-  
6       ance with such statute would be inconsistent with the  
7       protection of intelligence sources, methods, and activi-  
8       ties from unauthorized disclosure.

9       **“§ 395. Limitations on activities of intelligence commer-**  
10       **cial entities**

11       “(a) Nothing in this chapter shall be deemed to consti-  
12       tute authority for the conduct of intelligence activities (other  
13       than those expressly authorized by this chapter) which are  
14       not otherwise authorized by or pursuant to law.

15       “(b) A commercial entity authorized under section 391  
16       of this title, and the personnel thereof, shall not engage in  
17       intelligence activities within the United States, except—

18               “(1) training;

19               “(2) administration; and

20               “(3) recruitment of individuals who are not United  
21       States persons to serve subsequently as intelligence  
22       sources outside the United States in foreign intelli-  
23       gence collection activities.

24       “(c) No commercial entity authorized under section 391  
25       of this title may have as its overt activity communications

1 media activity, religious activity, or traffic in arms or  
2 security-related services.

3 “(d) No United States person may be employed by, or  
4 assigned or detailed to, a commercial entity authorized under  
5 section 391 of this title who has not been informed that such  
6 entity is an entity of the United States Government engaged  
7 in intelligence activities.

8 **“§ 396. Executive branch oversight, accountability, and**  
9 **coordination**

10 “(a)(1) The Secretary of Defense, after consultation  
11 with the Attorney General and the Director of Central Intel-  
12 ligence, shall issue such regulations as may be necessary to  
13 implement this chapter.

14 “(2) The regulations issued by the Secretary of Defense  
15 under this section shall include provisions to ensure—

16 “(A) centralized, effective departmental oversight  
17 of the use of authority granted by or pursuant to this  
18 chapter;

19 “(B) effective management, operational, security,  
20 legal, and accounting controls in the use of such au-  
21 thority;

22 “(C) coordination of the activities of commercial  
23 entities authorized under section 391 of this title with  
24 the Department of State, the Federal Bureau of Inves-  
25 tigation, and the Central Intelligence Agency; and

1           “(D) compliance with this chapter, title V of the  
2       National Security Act of 1947, and the War Powers  
3       Resolution.

4       “(b) The inspector general of the Department of De-  
5       fense shall conduct at least annually a program and oper-  
6       ations review and evaluation and a financial audit of activities  
7       undertaken pursuant to this chapter, including the establish-  
8       ment, operation, and termination of commercial entities, and  
9       shall report thereon to the Secretary of Defense, the Perma-  
10      nent Select Committee on Intelligence of the House of Rep-  
11      resentatives, and the Select Committee on Intelligence of the  
12      Senate.

13      **“§ 397. Relationship to laws of the several States**

14      “(a) Commercial entities authorized under section 391  
15      of this title are entities of the United States Government.

16      “(b) Commercial entities authorized under section 391  
17      of this title, which are incorporated in, registered in, doing  
18      business in, or otherwise have contacts with a State, terri-  
19      tory, commonwealth or possession of the United States—

20           “(1) shall not be subject to the laws thereof, nor  
21      to the jurisdiction of the courts thereof; and

22           “(2) may engage in conduct which appears to  
23      comply with the laws thereof relating to accounting,  
24      banking, contracts, employment, finance, incorporation,  
25      registration, taxation, tort liability, and other regula-



1       tion of commercial activities as if the entity were sub-  
2       ject to such laws, and may engage in conduct which  
3       appears to submit to the jurisdiction of the courts  
4       thereof as if the entity were subject to such jurisdic-  
5       tion, if the Secretary of Defense certifies in writing  
6       that doing so is necessary to protect intelligence  
7       sources, methods, and activities from unauthorized dis-  
8       closure or is necessary in the interest of justice.

9       **“§ 398. Delegation of authority**

10       “Notwithstanding subsection 133(d) of this title, the  
11       Secretary of Defense may delegate his authority, functions  
12       and duties under subsections 391(a), 394(2), 396(a), and  
13       397(b) of this title only to the Deputy Secretary of Defense.

14       **§ 399. Definitions**

15       “In this chapter—

16               “(1) ‘commercial entity’ means a corporation,  
17       foundation, company, firm, partnership, association, so-  
18       ciety, joint venture, sole proprietorship, or other legal  
19       entity which is nongovernmental in appearance, within  
20       or outside the United States, established and operated  
21       solely to conceal foreign intelligence collection activi-  
22       ties under cover of its overt function;

23               “(2) ‘foreign intelligence collection activities’  
24       means the collection of foreign intelligence or counter-  
25       intelligence information by a component of the Depart-

1       ment of Defense or the armed forces, and related sup-  
2       port activities;

3               “(3) ‘intelligence activities’ means the collection of  
4       foreign intelligence or counterintelligence information,  
5       the conduct of counterintelligence operations, the con-  
6       duct of covert action, related support activities, and  
7       any other intelligence or intelligence-related activity of  
8       the United States Government; and

9               “(4) ‘United States person’ means a citizen of the  
10      United States or an alien admitted to permanent resi-  
11      dence in the United States.”.

12      (b) The tables of chapters at the beginning of subtitle A  
13      of such title, and at the beginning of part I of such subtitle,  
14      are each amended by inserting after the item relating to  
15      chapter 18 the following new item:

**“19. Department of Defense Intelligence Commercial Entities.. 391”.**

16      SEC. 3. The amendments made by this Act to title 10,  
17      United States Code shall take effect ninety days after the  
18      date of enactment of this Act.

○

entitled "Department of Defense Intelligence Commercial Entities," in part 1 of Subtitle A of title 10, United States Code, and makes conforming amendments to tables of chapters in title 10. Section 3 provides that the amendments made by the legislation to title 10 take effect ninety days after enactment of the legislation.

The provisions of chapter 19 of title 10 enacted by Section 2 of the bill are explained below:

#### Section 391

Subsection 391(a)(1) grants to the Secretary of Defense the authority, with the concurrence of the Attorney General and the Director of Central Intelligence, to establish and operate commercial entities to provide cover for foreign intelligence collection activities of the Department of Defense.

The requirement for the concurrence of the Attorney General ensures an independent high-level legal review of plans for establishment and operation of a DOD intelligence commercial entity, and ensures the harmony of the plans with the intelligence, counterintelligence, and law enforcement functions of components of the Department of Justice. The requirement for the concurrence of the Director of Central Intelligence ensures that the plans will be consistent with national intelligence needs and ensures the harmony of the plans with the intelligence, counterintelligence and special activities of other elements of the United States Intelligence Community.

To exercise his authority to establish a commercial entity, the Secretary of Defense must certify in writing that establishment and operation of that entity is essential to the conduct of an authorized foreign intelligence collection activity of the Department of Defense. Thus, the Secretary may authorize establishment of a commercial entity only when no reasonable and effective alternative method exists for carrying out an authorized DOD foreign intelligence collection activity.

The Secretary may initially authorize the establishment and operation of a commercial entity for any period not to exceed two years.

Subsection 391(a)(2) permits the Secretary of Defense to renew the authority to operate a commercial entity at the expiration of the previous period for which he has authorized its operation. The renewal requires the concurrence of the Attorney General and the Director of Central Intelligence and the written certification of the Secretary of Defense that the operation of the entity is essential to the conduct of an authorized foreign intelligence collection activity of the Department of Defense. The Secretary may renew the authority to operate the commercial entity for any period not to exceed two years. The number of successive periods for which operation of the commercial entity may be authorized is not limited.

Subsection (b) provides that the Secretary of Defense may terminate a commercial entity at any time. His authority to terminate a commercial entity is not conditioned upon any concurrence or certification.

#### Section 392

Section 392 grants to the Secretary of Defense authority to acquire, use and dispose of items needed in the establishment, operation and termination of DOD intelligence commercial entities. The broad authority granted ensures that the Secretary can provide the necessary administrative support for such commercial entities.

In addition to requiring administrative support common to any governmental organization, such as workspace, equipment, and

### DEFENSE INTELLIGENCE COMMERCIAL ENTITIES ACT

HON. G. WILLIAM WHITEHURST

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 19, 1985

Mr. WHITEHURST. Mr. Speaker, on December 16, 1985, I introduced H.R. 3963, the Defense Intelligence Commercial Entities Act. To assist those who review the legislation, I am inserting the section-by-section explanation of the legislation in the CONGRESSIONAL RECORD:

#### DEFENSE INTELLIGENCE COMMERCIAL ENTITIES ACT

##### SECTION-BY-SECTION EXPLANATION

The bill consists of three sections. Section 1 provides that the short title of the Act is the "Defense Intelligence Commercial Entities Act." Section 2 enacts a new chapter 19,

commercial services, a DOD intelligence commercial entity will require special administrative support due to its commercial functions and appearance. Thus, for example, the entity may require private legal services, commercial, and occupational licenses from a State or foreign government, private liability insurance, and private banking services. Section 392 ensures that the Secretary of Defense can meet the administrative support needs of a defense intelligence commercial entity, including its unusual needs stemming from its ostensibly commercial status.

The authority granted by Section 392 is independent of, and in addition to, any other acquisition, use or disposal authority which the Secretary of Defense possesses.

#### Section 393

Section 393 ensures that the handling and use of funds in connection with defense intelligence commercial entities will be consistent with the ostensible commercial status of those entities. Section 393 displaces several limitations contained in Section 3302 of title 31, United States Code, on governmental use of funds. Observance of the limitations contained in Section 3302 of title 31 would be inconsistent with the ostensible commercial status of defense intelligence commercial entities.

Subsection 393 (a) permits the Secretary of Defense to establish and maintain commercial banking accounts in the establishment, operation, and termination of defense intelligence commercial entities. The authority to use commercial banking services applies both with respect to appropriated funds used in connection with a defense intelligence commercial entity and with respect to funds generated by the commercial activities of that entity.

Subsection 393 (b) permits use of funds generated by the commercial activities of a defense intelligence commercial entity to offset the necessary and reasonable expenses incurred by that entity. The funds generated by a particularly entity may only be used to offset the expenses of that particular entity.

Subsection 393 (c) provides that funds generated by a defense intelligence commercial entity that are no longer needed for the conduct of the activities of that entity shall be remitted to the Treasury as miscellaneous receipts.

Subsection 393 (d) provides for the disposition of the proceeds generated by termination of a defense intelligence commercial entity. After all outstanding obligations of the entity are met, the remaining proceeds revert to the Treasury.

#### Section 394

Section 394 provides that the establishment, operation, and termination of a defense intelligence commercial entity; any acquisition, use or disposition with respect to such entity; and any deposit, withdrawal or use of funds with respect to such entity, will be carried out in accordance with prevailing commercial practices, consistent with the protection of intelligence sources methods and activities from unauthorized disclosure, and without regard to certain requirements of federal statutes.

To maintain its usefulness as a cover for foreign intelligence collection activities, a defense intelligence commercial entity must maintain commercial credibility. The entity must appear to anyone who scrutinizes it to be a bona fide commercial entity, rather than an entity of the United States Government. Accordingly, the entity must conduct all aspects of its activities in the same manner as would a private sector commercial entity. Circumstances may arise, however, in which observing prevailing commercial practices would not be consistent with

the protection of intelligence sources, methods or activities from unauthorized disclosure, and in such cases prevailing commercial practices would not be observed.

The section grants extraordinary authority to waive the applicability of requirements in a broad spectrum of federal statutes to the extent necessary to protect intelligence sources, methods and activities from unauthorized disclosure. Without the waiver authority, a defense intelligence commercial entity would be obliged to observe federal statutes that normally apply to U.S. Government entities but do not apply to a bona fide commercial entity. Such inconsistency between the conduct of an entity and its ostensible status might reveal to an interested observer that the entity is not what it claims to be, risking the compromise of commercial cover and of the intelligence activities conducted by the entity.

A federal statute within one of the enumerated categories (federal appropriations, federal receipt and use of funds other than appropriated funds, federal acquisitions, federal property management, federal services management, federal information management, federal tort claims, federal employment or federal government corporations) ceases to apply if, and to the extent that, the Secretary of Defense certifies that compliance with the statute would be inconsistent with the protection of intelligence sources, methods and activities from unauthorized disclosure. The section provides that a statute is waived only to the extent that compliance would be inconsistent with such protection. Thus, the Secretary's authority extends not to blanket waiver of the applicability of the statute, but only to the waiver of the applicability of the particular requirements of that statute which would be inconsistent with the protection of intelligence sources, methods and activities from unauthorized disclosure (which may in some circumstances amount to waiver of the applicability of the entire statute).

The section makes clear that the Secretary's waiver authority does not apply with respect to the chapter enacted by this legislation (chapter 19 of title 10, United States Code), Title V of the National Security Act of 1947 (which relates to congressional oversight of intelligence activities) and the War Powers Resolution. Thus, nothing in the statute in any way limits the role of the Congress in oversight of intelligence activities and military activities.

#### Section 395

Subsection 395(a) makes clear that the chapter enacted by the legislation (chapter 19 of title 10, United States Code) provides authority only for establishment and use of commercial entities as cover for DOD foreign intelligence collection activities, and does not provide the authority for those underlying foreign intelligence collection activities.

Subsection 395(b) establishes clear limitations on the activities of defense intelligence commercial entities and their personnel within the United States. They may engage within the United States only in (1) training, (2) administration, and (3) recruitment of non-U.S. persons to serve outside the United States as intelligence sources. Administration includes the full range of support activities necessary to establish, operate and terminate a commercial entity, such as finance, logistics, and procurement, which may be performed by establishment and operation within the United States of defense intelligence commercial entities solely to provide such support. The subsection ensures that the activities of defense intelligence commercial entities will have a

foreign focus and will not be used to conduct domestic intelligence activities.

Subsection 395(c) provides that no defense intelligence commercial entity may have as its overt activity communications media activity, religious activity, or traffic in arms or security-related services.

The prohibition against establishing a defense intelligence commercial entity to engage in communications media activity protects against the possibility of media activity by such an entity having an accidental or intentional effect on the domestic political processes of the United States. The prohibition prevents establishment of defense intelligence commercial entities to engage in radio broadcasting, television broadcasting, newspaper publishing, book or magazine publishing, wire services and similar activities. The prohibition against the overt activity of a defense intelligence commercial entity being communications media activity does not prevent incidental commercial use of communications media by such an entity if prevailing commercial practices so require. Thus, for example, if a defense intelligence commercial entity is engaged in a cover business of a type in which one would normally place commercial advertisements or solicitations in a local newspaper, the entity may do so.

The prohibition against establishing a defense intelligence commercial entity to engage in religious activity protects the integrity of religious freedom and religious institutions.

The prohibition against establishing a defense intelligence commercial entity to engage in traffic in arms or security-related services prevents the possibility of using defense intelligence commercial entities to circumvent United States arms transfer policies or to implement those policies. The Arms Export Control Act, the Foreign Assistance Act, and the statutory mechanisms for covert arms transfers govern the transfer of arms and defense services. The prohibition does not in any way prohibit the personnel of a defense intelligence commercial entity from defending themselves, nor does it prevent the use of such personnel on detached duty in military operations, consistent with the War Powers Resolution.

Subsection 395(d) requires that every U.S. person employed by, or assigned or detailed to, a defense intelligence commercial entity be informed prior to employment, assignment or detail that the entity as an entity of the United States Government engaged in intelligence activities. The provision thus prohibits unwitting employment, assignment or detail of United States persons.

#### Section 396

Subsection 396(a) authorizes and directs the Secretary of Defense, after consultation with the Attorney General and the Director of Central Intelligence, to issue regulations to implement the legislation, and specifies a number of requirements which those regulations must satisfy.

The Secretary's regulations must provide for effective centralized Department of Defense oversight of activities related to defense intelligence commercial entities. The requirement for centralization of the internal oversight role promotes consistency among DOD components in establishing policies and practices involving defense intelligence commercial entities and also facilitates oversight of defense intelligence commercial activities by non-DOD entities, such as the Congress. The requirement that the internal oversight role occur at the departmental level, rather than at the lower level of individual DOD components, ensures appropriate high-level attention

within the Department of Defense to any problems which may come to light in the course of internal oversight activities.

The Secretary's regulations must provide effective management, operational, security, legal, and accounting controls for all matters relating to defense intelligence commercial entities. The Secretary's careful design and establishment of strict controls will be of critical importance, especially given that such controls often will replace statutory controls which the legislation authorizes the Secretary to waive in certain circumstances.

The Secretary's regulations must provide for coordination of defense intelligence commercial entity activities with the Department of State, the Federal Bureau of Investigation, and the Central Intelligence Agency.

The Secretary's regulations must ensure compliance with the chapter enacted by the legislation (chapter 19 title 10, United States Code), Title V of the National Security Act of 1947 (relating to congressional oversight of intelligence activities), and the War Powers Resolution.

Subsection 396(b) authorizes and directs the Department of Defense Inspector General to conduct, at least annually, a program and operations review and evaluation and a financial audit of all activities relating to defense intelligence commercial entities and to report thereon to the Secretary of Defense and the intelligence committee of the Congress.

#### Section 397

Subsection 397(a) provides that defense intelligence commercial entities are entities of the United States Government. As such, defense intelligence commercial entities will enjoy within the constitutional scheme any immunities and privileges enjoyed by the other federal entities. Thus, for example, the sovereign immunity of the United States Government to suit, to the extent not otherwise waived by statute, will extend to defense intelligence commercial entities.

Subsection 397(b) explicitly preempts the applicability of State laws to, and the jurisdiction of State courts over, defense intelligence commercial entities. Thus, defense intelligence commercial entities will be subject exclusively to federal law. Subsection 397(b) provides that, although defense intelligence commercial entities are not subject to State laws and State court jurisdiction, they may engage in conduct which appears to comply with State laws and State court jurisdiction if the Secretary of Defense determines that doing so is necessary to protect intelligence sources, methods and activities from unauthorized disclosure or is necessary in the interests of justice.

Under the authority granted in subsection 397(b), with the appropriate certification, a defense intelligence commercial entity may engage in conduct which appears to comply with State laws in the same manner as would a bona fide commercial entity. Thus, for example, if the Secretary of Defense certifies that protection of intelligence sources, methods and activities requires doing so, he might authorize a defense intelligence commercial entity to incorporate within a particular State, even though that State's incorporation laws do not provide for incorporation by federal entities. Similarly, even though federal agencies are not subject to State taxation, the Secretary of Defense, based upon the appropriate certification, may authorize the entity to file State tax returns and remit State taxes.

Also, under the authority granted in subsection 397(b), a defense intelligence commercial entity may engage in conduct which appears to submit to State court jurisdiction

in the same manner as would a bona fide commercial entity. Thus, for example, if the Secretary of Defense certifies that protection of intelligence sources, methods and activities or the interests of justice require doing so, he might authorize a defense intelligence commercial entity to participate in a lawsuit in a State court based on breach of a commercial contract in the same manner as would a bona fide commercial entity.

The Department of Defense may well make substantial use of the authority to authorize defense intelligence commercial entities to engage in conduct appearing to comply with State commercial laws, since it may become the Department's practice to establish such entities by incorporation or registration under the laws of the several States. In contrast, the Department should only rarely need to use the authority to authorize defense intelligence commercial entities to engage in conduct appearing to submit to the jurisdiction of a State court, as the authorized activities of such entities within the United States are quite restricted, and thus are not likely to give rise to many situations in which submission to State court jurisdiction would be appropriate.

Section 398 provides that the Secretary of Defense may delegate only to the Deputy Secretary of Defense the Secretary's authority, functions and duties under subsections 391(a), 394(b), 396(a) and 397(b) of title 10, United States Code, as enacted by this legislation. By requiring the Secretary or Deputy Secretary of Defense to exercise the authority, duties, and functions set forth in these subsections, the legislation ensures high-level attention to sensitive decisions involving defense intelligence commercial entities.

Under Section 398, the Secretary of Defense may delegate only to the Deputy Secretary of Defense the authority to authorize and renew authorization for the establishment and operation of defense intelligence commercial entities based upon the requisite certification (§ 391(a)); the authority to waive the applicability of certain federal statutes based upon the requisite certification (§ 394(2)); the authority to issue implementing regulations (§ 396(a)); and the authority to authorize defense intelligence commercial entities to appear to comply with State commercial laws and court jurisdiction to which they are not subject. Authorities, duties and functions provided in the legislation, other than in the subsections specifically cited by Section 398, are subject to delegation in accordance with subsection 133(d) of title 10, United States Code.

The limitation on delegation of certain specified authorities, duties and functions will not place an inordinate administrative burden on the Secretary and Deputy Secretary. Exercise of the authority to authorize establishment and operation of a commercial entity will occur only once for each entity, and subsequent renewals to operate will occur only occasionally. Exercise of the authority to waive various federal statutory requirements applicable to an entity, to authorize apparent compliance with State statutes, and to authorize apparent submission to State court jurisdiction, will often accompany the authorization to establish and operate the entity, although changes may be necessary with respect to an entity from time to time. Exercise of the authority to issue implementing regulations should occur once, with changes to such regulations thereafter occurring only occasionally, as experience demands. The greatest burden upon the Secretary and Deputy Secretary will thus occur at the time of creation of a defense intelligence commercial entity,

when the nature and scope of its activities and the legal regime governing it are established. Cabinet-level involvement in decisions of such sensitivity at that time is appropriate.

#### Section 399

Section 399 defines the terms "commercial entity," "foreign intelligence collection activities," "intelligence activities," and "United States person" used in the new chapter 19 of title 10, United States Code, enacted by the legislation.

The definition of "commercial entity" comprehends all forms of non-governmental legal entities, within or outside the United States, established and operated solely to conceal DOD foreign intelligence collection activities under cover of its overt function. The definition makes clear that the legislation authorizes establishment of DOD commercial entities only to provide cover for DOD foreign intelligence collection activities. The legislation does not authorize establishment of such entities to engage in any intelligence activities other than foreign intelligence collection activities, nor to provide cover for any intelligence activities other than foreign intelligence collection activities. Thus, for example, DOD may not establish such entities to engage in the conduct of, or to provide cover for, counterintelligence operations (as distinguished from the collection of counterintelligence information) or covert action. The term "commercial entity" is used throughout the legislation.

The definition of "foreign intelligence collection activities" comprehends only collection by the Department of Defense or the armed forces of foreign intelligence or counterintelligence information, and related support activities. It does not include any other types of intelligence activities, such as counterintelligence operations or covert action. The legislation authorizes the establishment of defense intelligence commercial entities only to provide cover for "foreign intelligence collection activities." The term "foreign intelligence collection activities" is used in Sections 391, 395, and 399.

The definition of "intelligence activities" comprehends all intelligence and intelligence-related activities of the United States Government. The term "intelligence activities" is used in Section 395.

The term "United States person" means only citizens of the United States and aliens admitted to permanent residence in the United States. The term "United States person" is used in Sections 395 and 399.

C

TITLE V - SUPPORT FOR DEFENSE INTELLIGENCE  
COLLECTION ACTIVITIES

SEC. 501. (a) Subtitle A of Title 10, United States Code, is amended by adding the following new chapter after Chapter 16:

"CHAPTER 19 - SUPPORT FOR INTELLIGENCE

SEC.

391. Purpose of this chapter.

392. Definition.

393. Authority to conduct commercial cover.

394. Authority to acquire logistic support, supplies, and services.

395. Oversight.

396. General Provisions.

"SEC. 391. Purpose of this chapter.

The purpose of this chapter is to provide statutory authority for the Secretary of Defense or the Secretaries of the Military Departments to conduct support activities necessary for authorized and appropriately coordinated intelligence collection activities of the Department of Defense.

"SEC. 392. Definition.

a. "Intelligence collection activities" means the collection of foreign intelligence or counterintelligence information by intelligence components of the Department of Defense.

b. "Intelligence support activities" means those activities described in sections 393 and 394, below.

c. "Commercial cover" means a business entity that is established solely to conceal the role of an intelligence component of the Department of Defense as it performs intelligence collection activities.

"SEC. 393. Authority to conduct commercial cover.

a. "The Secretary of Defense or the Secretaries of the Military Departments, after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, as appropriate, may establish and conduct commercial entities such as corporations, partnerships, sole proprietaries, and other business entities as commercial covers to support intelligence collection activities of the Department of Defense, as defined herein. Such commercial entities may be established only upon written certification by the Secretary concerned that commercial cover is necessary to the conduct of authorized intelligence collection activities.

b. "The establishment and operation of commercial entities pursuant to this section shall be in accordance with prevailing commercial practices so long as such practices are not inconsistent with the purposes of commercial cover. To this end, laws applicable to federal appropriations, federal property management, federal acquisitions, federal employment and government corporations shall not apply to the establishment and operation of commercial covers upon the written certification by the Secretary concerned or his designee for the purpose that the application of such laws would risk the compromise of commercial cover.

c. "The Secretary of Defense or the Secretaries of the Military Departments, or their designees, are authorized to deposit and withdraw funds appropriated for the Department of Defense used to conduct commercial cover and funds generated by the business entities authorized by this section in banks or other financial institutions.

d. "Funds generated by such business entities may be used to offset necessary and reasonable expenses incurred by the commercial cover. As soon as practicable, funds generated by a commercial cover that are no longer necessary for the conduct of that commercial cover shall be deposited in the Treasury of the United States as miscellaneous receipts.

e. "Upon the liquidation, dissolution, sale, or other final disposition of a commercial cover established and conducted under the provisions of this section, the funds, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

"SEC. 394. Authority to acquire logistic support, supplies, and services.

a. "The Secretary of Defense or the Secretaries of the Military Departments, or their designees, may acquire any goods, services, property, buildings, facilities, space, insurance, licenses and any equipment necessary in order to establish or maintain a commercial cover.

b. "Acquisitions made under the provisions of this section are to be made utilizing procedures consistent with prevailing commercial practice so long as such practices are not inconsistent with the purposes of the commercial cover. To this end, laws applicable to federal acquisitions, federal appropriations, federal property management, and federal employment shall not apply where the application of such laws would risk compromise of the commercial cover.

"SEC. 395. General Provisions.

a. "The Secretary of Defense shall promulgate regulations to ensure oversight, operational effectiveness, and accountability of the intelligence support activities conducted pursuant to sections 393 and 394 of this title.

b. "The Secretary of Defense or Secretaries of the Military Departments shall ensure that elements of the Department of Defense that undertake intelligence support activities pursuant to this chapter conduct an annual review and audit of such support activities.

c. "Intelligence support activities authorized under this chapter shall be protected pursuant to 50 U.S.C. 403(d)(3).

(b) The table of chapters at the beginning of subtitle A of such title and at the beginning of Part I of such subtitle are each amended by inserting after the item relating to chapter 18 the following new item:

"19. Support for Intelligence.....391".



## TITLE V

### SUPPORT FOR DEFENSE INTELLIGENCE COLLECTION ACTIVITIES

Section 501 adds a new chapter 19 to subtitle A of Title 10, United States Code, authorizing the establishment and conduct of corporations or other business entities to provide support for Department of Defense undercover intelligence collection activities.

Proposed subsection 391 states that the purpose of proposed chapter 19 is to provide the SECDEF and the Secretaries of the Military Departments to establish the statutory authority commercial covers to support intelligence collection activities.

Proposed subsection 392a defines a new term "intelligence collection activities". The use of a new term rather than the redefining of the term "intelligence activities" precludes the development of two definitions (E.O. 12333 & statutory) for the same term.

Proposed subsection 392b defines the term "intelligence support activities" to mean the establishment, acquisition and conduct of commercial cover systems and the acquisition of logistical support thereto as described in subsections 393 and 394.

Proposed subsection 392c defines a new term, "commercial cover", which is used throughout the proposed Chapter 19 of this title.

Proposed subsection 393a authorizes the Secretary of Defense or the Secretaries of the Military Departments to establish and conduct commercial covers as commercial entities. In making specific reference to consultation with the Director of Central Intelligence and the Director of the

Federal Bureau of Investigation, this subsection is not intended in any way to alter or derogate from the responsibilities and authority of the Chief of Mission to a foreign country under 22 U.S.C. 3927 for direction, coordination, and supervision of all U.S. Government employees in that country (except for employees under the command of a U.S. area military commander) or from established procedures for coordination with the Secretary of State in the conduct of clandestine activities. Subsection 393a further states that the establishment of a commercial cover requires a finding in the form of a written certification by the Secretary responsible for the commercial entity that the commercial cover is necessary to the conduct of authorized intelligence collection activities.

Proposed subsection 393b requires that the establishment and operation of such commercial covers be in accordance with prevailing commercial practice. Federal statutes that regulate the establishment and operation of commercial and industrial type government activities shall not apply to the establishment and operation of commercial covers conducted pursuant to this section when there is a written certification by the Secretary concerned or his designee that compliance with such statutes would risk compromise of the commercial cover. It is not intended that the authorities contained in this section will relieve the Department of Defense from any requirements of applicable laws. Any exemptions apply only to the operations of the commercial cover. Commercial covers must of necessity conform to standard commercial practices. Compliance with statutory requirements that govern routine government procurement and financial transactions would not conform with such prevailing commercial practices and would flag a commercial cover entity as being connected with the United States Government, thus risking the security of the commercial cover and the underlying intelligence collection activities. In the past, Congress has exempted the FBI from certain procurement and financial requirements, e.g., the Anti-Deficiency Act, 31 U.S.C. 1341, and the Department of Defense is proposing that similar exemptions be authorized for intelligence support activities. It is virtually impossible to foresee and list by citation every statutory requirement that may be incompatible with intelligence support activities. Therefore, subsection 393b describes the exemptions categorically in order to capture and embody all the provisions that would risk compromising the commercial cover. Such statutes encompass laws applicable to federal appropriations, federal property management, federal acquisitions, federal employment, and government corporations. These categories of law are defined below.

"Federal acquisitions" means acquiring real estate, goods or services for the United States Government. These activities are principally governed by Titles 41 and 10 of the United States Code. Title 41 requirements that may be incompatible with intelligence support activities include:

41 U.S.C. 5 which establishes the requirement to advertise proposed purchases and proposed contracts for supplies or services.

41 U.S.C. 35 which requires the inclusion of contract provisions such as the Walsh-Healey Act representations and stipulations.

41 U.S.C. 46 and 48c which establish the requirement to purchase blind-made products.

41 U.S.C. 255 which limits advance payments to contractors.

41 U.S.C. 253 which requires full and open competition.

Title 10 requirements that may be incompatible with intelligence support activities include:

10 U.S.C. 2207 which prohibits contracting unless the contract contains specific provisions.

10 U.S.C. 2276 which makes the contractor's books subject to Government audit.

10 U.S.C. 2301 which prohibits cost-plus-a-percentage-of-cost contracts. This section also subjects a commercial cover to small business set-asides. This may conflict with prevailing commercial practice.

10 U.S.C. 2304 which limits the use of negotiated procurements. Formal advertisement (sealed bids) may not be consistent with prevailing commercial practice.

10 U.S.C. 2306 which places restrictions on the kinds of contracting that may be used. These restrictions may conflict with prevailing commercial practice. This section also creates a right to examine all books, records, etc. of the contractor or subcontractor. This may also identify the intelligence support activity as a U.S. Government entity.

10 U.S.C. 2307 which prohibits certain advance payments for property and services. This may conflict with prevailing commercial practice.

10 U.S.C. 2313 which creates a right to inspect plants and audit books of certain contractors and subcontractors. Such an inspection would identify the contracting agency as a United States Government entity.

10 U.S.C. 2360 which creates a right for students contracting with the Government to be entitled to be considered as employees which may identify the contracting agency as a United States Government entity.

10 U.S.C. 2381 which requires certain measures for non-negotiated procurements which will identify the contracting agency as a United States Government entity (surety bonds, charges, etc.).

10 U.S.C. 2384 which requires supplies furnished to a military department to be uniquely marked, which will identify the contracting agency as a United States Government entity.

10 U.S.C. 2631 which restricts transportation of supplies to U.S. Flag Vessels. This may conflict with prevailing commercial practice.

"Federal property management" means the control and use of federal real and personal property. These activities are principally governed by Titles 40 and 10 of the United States Code. Restrictions that may be incompatible with commercial covers include:

40 U.S.C. 34 which limits the leasing of space in the District of Columbia.

40 U.S.C. 33a which establishes restrictions on construction loans for office buildings by Government corporations.

40 U.S.C. 129 which establishes limits on a Government corporation's leasing of buildings in addition to the limitation on rental rates and prohibits the inclusion, in any lease, of any provision regarding the repair of real property.

10 U.S.C. 2662 which requires reporting of certain real estate transactions to Congress 30 days in advance of the transaction.

10 U.S.C. 2672 restricts agency authority to acquire an interest in land to \$100,000 or less.

10 U.S.C. 2676 limits authority to acquire land unless acquisition is expressly authorized by law.

"Federal employment" means restrictions, rights, duties, and entitlements flowing from Part III of Title 5 of the United States Code. The intent of this section is to exclude from the application of Title 5, United States Code, employees of the commercial cover who are not federal employees occupying positions within the commercial cover. The restrictions, rights, duties, and entitlements that may be incompatible with prevailing commercial practices include:

5 U.S.C. 3101 et seq. which limits the authority to appoint employees.

5 U.S.C. 5101 et seq. which establishes classes of employees and prescribes levels of pay for those classes.

5 U.S.C. 4101 et seq. which establishes training programs.

5 U.S.C. 4301 et seq. which establishes a performance rating system for employees, including minimum due process.

5 U.S.C. 6101 et seq. which establishes a leave and attendance system.

5 U.S.C. 7101 et seq. which establishes a system for adverse actions, including removal.

5 U.S.C. 8101 et seq. which provides for insurance and other entitlements.

"Government Corporations" means a corporation that is owned by the Federal Government. While commercial covers are not Government corporations in the classical sense, they nonetheless meet definitions set out in 31 U.S.C. 9101(1). Government corporations are principally governed by Title 31 of the United States Code. Requirements that pertain to Government corporations that may be incompatible with commercial covers include:

31 U.S.C. 9102 which requires that each corporation established or acquired by an agency be specifically authorized by Congress.

31 U.S.C. 9103 which requires an annual budget submission to Congress.

31 U.S.C. 9107 which requires Comptroller General's approval prior to the consolidation of a corporation's cash.

31 U.S.C. 9108 which limits the obligations that may be issued by a Government corporation.

It is intended that commercial covers utilize these exemptions only to the extent that it is necessary, and that they be conducted in a manner that is generally consistent with ordinary commercial practice. Adequate safeguards are provided in the legislation and the Department's own procedures will further ensure the proper application of the exemptions and the appropriate use of funds.

Subsection 393c authorizes the deposit and withdrawal of appropriated and generated funds in banks and other financial institutions.

Subsection 393d requires that all proceeds generated by a commercial cover that are no longer necessary to offset necessary and reasonable expenses of the commercial cover, revert to the U.S. Treasury as miscellaneous receipts.

Subsection 393e requires that funds resulting from a final disposition of a commercial cover, after all obligations have been met, shall be deposited in the United States Treasury as miscellaneous receipts.

Proposed subsection 394a grants to the Secretary of Defense or the Secretaries of the Military Departments, or their designees, the authority to acquire necessary services, personalty, fixtures, and realty in order to support a commercial cover.

Proposed subsection 394b requires that acquisitions made pursuant to subsection 394a utilize procedures that are consistent with prevailing commercial practice. The subsection further provides that such acquisitions shall be exempt from laws governing federal acquisitions, federal appropriations, federal property management, and federal employment where the application of such laws would risk the compromise of the commercial cover. It is not intended that the authorities contained in this section will relieve the Department of Defense from any requirements of applicable laws. Any exemptions apply only to the operations of the commercial cover. For a discussion of these laws see the analysis above pertaining to proposed subsection 393b.

Proposed section 395a requires the Secretary of Defense to promulgate regulations to ensure oversight, operational effectiveness, and accountability of all intelligence support activities undertaken pursuant to this chapter.

Proposed subsection 395b requires the Secretary of Defense, or the Secretaries of the Military Departments to ensure that an annual review and audit is conducted of each intelligence support activity.

Proposed subsection 395c makes it clear that all intelligence support activities undertaken pursuant to this chapter are to be protected from unauthorized disclosure as set forth in 50 U.S.C. 403(d)(3).

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Central Intelligence Agency



Washington, D.C. 20505

D

The Honorable Lee H. Hamilton  
Chairman  
House Permanent Select Committee  
on Intelligence  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to provide the Agency's views on H.R. 3963, the "Defense Intelligence Commercial Entities Act".

As expressed on previous occasions to the Committee, the Agency supports the efforts of the Department of Defense (DoD) to obtain enactment of proprietaries legislation. The operational tools provided by such legislation would enable DoD military intelligence collectors to gather intelligence information required by military commanders worldwide. The legislation would provide a better and more secure operating environment for DoD collectors and open access to intelligence targets not currently accessible.

The legislation, however, would neither change nor increase DoD's intelligence mission nor duplicate existing Agency activities. Any use of the authorities granted by such legislation would be coordinated with the Agency under existing DoD-Agency coordination procedures so as to avoid any duplication of effort. Upon enactment of such legislation, the Agency would assist DoD by providing the benefit of past experience in the area.

As you know, the Administration's proposal for DoD proprietaries legislation is contained in Title V of the draft "Intelligence Authorization Act for Fiscal Year 1987" (transmitted to the Congress by letter, dated March 14, 1986, from the Acting Director of Central Intelligence). You will recall that a similar proposal was also contained in last year's draft authorization bill as transmitted to the Congress.

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Legislation of this nature has the potential for creating duplication of effort and overlapping of functions. The Administration's proposal was, therefore, carefully coordinated within the Intelligence Community and the Executive Branch to avoid such problems. The end product is one which the Agency, the Community and the entire Executive Branch can support.

The Agency supports H.F. 3963 insofar as it, too, recognizes the need for legislation of this nature. Representative Whitehurst is to be commended for his recognition of that need and for his efforts in support of legislation on the subject. The Agency, however, prefers the Administration proposal because of the careful consideration which went into its preparation. Hopefully, though, as both Representative Whitehurst and the Department are proceeding from the same basis, i.e., the need for legislation, they can work together.

The Agency believes that the subject of proprietaries legislation is one which deserves careful attention by the Committee. The Agency, therefore, urges the Committee to give consideration to holding hearings on the subject. At such hearings, the need for legislation as well as the rationale behind the Administration proposal could be fully explored.

We thank you for entertaining the Agency's comments on this subject.

The Office of Management and Budget advises that submission of this report is consistent with the President's legislative program.

Sincerely,

Clair E. George  
Deputy Director for Operations

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Washington, D.C. 20505

26 APR 1985

The Honorable Bob Stump  
Ranking Minority Member  
Permanent Select Committee on Intelligence  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Stump:

The Administration has now cleared the draft FY 86 Intelligence Authorization Bill for Congressional action. Title V, Support for Defense Intelligence Activities, would give DoD statutory authority to establish and operate commercial entities as cover support for DoD intelligence collection activities.

CIA supports DoD's efforts to achieve legislative enactment of this authority. Military intelligence requirements have become more and more demanding, particularly in regions where United States military presence is absent or where our official presence is small or closely watched. DoD intelligence collectors need the operational tools this legislation provides, i.e., nonofficial commercial cover, to enhance their capability to gather the information needed by commanders throughout the world.

Military intelligence operations are an integral part of the combined Intelligence Community effort. The proposed legislation would neither change nor increase DoD's intelligence mission nor create a DoD activity duplicating CIA's. It would, however, provide a more secure operating environment for DoD intelligence collection activities and facilitate access to targets not readily accessible under current scenarios. DoD and CIA already have established viable intelligence collection coordination procedures. Any use of the authority granted in this legislation would continue to be coordinated with CIA under those same procedures so as to avoid any duplication of effort. CIA is prepared, upon enactment, to brief DoD regarding its experience in establishing proprietaries. A copy of this letter is also being provided to Chairman Hamilton.

Sincerely,

Clair E. George  
Deputy Director for Operations

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